

Dear Senate Judiciary Committee Members,

I am writing regarding SB 131, which I understand is going before the Senate Judiciary Committee on Tuesday, March 5, 2013 at 2:30 pm.

CONCERNS REGARDING SENATE BILL 131

I understand that the purpose of Senate Bill 131 is to protect children, but this bill contains numerous areas that need clarification. I have read SB 131 and the Judiciary Review of February 26, 2013 and am writing to express my concerns.

This bill does not provide enough clarification to be effective in allowing a fair and accurate determination to be made. The areas of concern are outlined below.

1. The bill repeatedly refers to a person “Required to Register as a sex offender for an offense in which the victim was a child.”

A. What qualifies the victim as a “child” – is that anyone under the age of 18, anyone under the age of 17, a victim under age 10? Simply saying a “child” leaves this provision open to interpretation by prosecutors, judges, and others involved in making parenting time decisions.

The Judiciary review states that this applies to someone who has convicted a CSC against their own child, but this is not clarified in the actual bill.

B. Alternate provisions should be made for registered offenders who were adjudicated as a juvenile. Their victims will most likely be a minor, but they likely have had no sexual offenses since becoming an adult.

C. Consideration should be given to cases where the offender and victim are of a similar age. Other statutes have specific provisions for offenses where the offender and victim are of a similar age, and provisions should be made in this bill as well.

2. Item 4 (B)(i) provides that one of the factors is whether there are objections by the other party to parenting time.

A. Any couple involved in a divorce, separation, or other dispute regarding the support, custody or parenting time of a minor child are likely to make unfounded accusations against the other parent to further their own position. The bill should require that any objections made by another parent be specific and substantiated by documented proof from law enforcement, medical records and/or a mental health professional who specializes in sexual abuse of juveniles so that an accurate determination can be made on whether the parent has actually committed an offense against this child or whether the other parent is using such accusations as a power play.

3. Item 4(B)(ii) and 4(B)(iii) requires consideration on whether custody and parenting time can be exercised “...in a manner that ensures the child will have no contact with the individual required to register as a sex offender and whether safeguards can be put into place.

A. Factors such as this should be given consideration only when the registered sex offender was an adult when they committed the crime and the victim was a child. A person who was adjudicated as a juvenile and has no other sexual offenses after becoming an adult should not fall within this restriction and should not be prevented from contact.

4. Item 4(B)(vi) regarding any history of domestic violence, other sexual offenses, or other acts or threats of violence against any person by the individual required to register as a sex offender for an offense in which the victim was a child.

A. These are safeguards that should be given consideration for any parent when a custody and parenting time investigation is being conducted. Such safeguards should not be discriminatorily directed at a registered sex offender.

B. This raises concern for unfair determination by lay people when interpreting the need for safeguards such as this. If a parent was involved in something such as telephone harassment (sometimes charged as domestic violence), a bar fight, or similar events is not necessarily unable to safely and effectively parent a child.

5. Item 4(B)(viii) regarding completion of a program of evaluation and counseling designed specifically for sex offenders.

A. This is a factor that could effectively be utilized in eliminating the need to undergo other factors or restrict a person’s ability to have custody or parenting time with their children. If a parent has successfully completed a program, whether while in custody or on their own and has had no other sexually based offenses since that time, then the risk factor has obviously been eliminated.

6. Item 6(1) Provides for “Review of the case at specified times in the court’s discretion.”

A. This requirement needs a required review at specific times so that reviews are properly regulated. If a parent is given less than the Standard Friend of the Court guidelines for parenting time or custody based on their sex offender status then reviews should be conducted every 90 days, which is the equivalent of a mandated review when children are in foster care. Consideration must be given to the well-being of the minor children and the importance of establishing a healthy parent-child relationship. Undertaking steps to insure that this situation is monitored with the intent of increasing the parent’s time with his/her child on an regular basis requires a mandated review time frame.

B. If a parent is receiving parenting time in accordance with the standard Friend of the Court guidelines and no issues arise within a 12 month period, then the need for reviews could be eliminated.

I request that consideration be given to clarifying this bill so that there are no areas of misinterpretation. I also request that specifications be established under which the provision or consideration would be

waived. For example, if a registered offender meets three (3) or more of the following, then their ability to have custody and/or parenting time should not be an area of concern:

1. Offender was adjudicated as a juvenile
2. Offender has gone five (5) or more years without another sexually based offense.
3. Offender is current/up-to-date on the registry.
4. Offenders with HYTA/no conviction on their record.
5. Offenders who are on the non-public registry.
6. Offenders who completed a sex-offender program either while in custody or on their own.

Having a means to eliminate the restrictions against certain offenders would provide a substantial savings in both time and money to the courts, workers, law enforcement officers and agencies involved in making custody and parenting time determinations.

Friend of the Court should be applying the above factors to any parent being considered for parenting time and/or custody and they should not be conducting such investigations with the intent of signaling out parents who are registered sex offenders. Workers conducting such investigations should be properly trained in safeguarding children from all dangers, not just sexual offenses. Senate Bill 131 puts an emphasis on the history of sexual offenses, drawing attention away from other issues which should be of equal importance in making a custody and parenting time determination.

Thank you very much for your time and consideration.

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